IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7278 of 2001
with
SPECIAL CIVIL APPLICATION NO. 5120 OF 2001
with
LETTERS PATENT APPEAL NO. 1177 OF 2001
with
LETTERS PATENT APPEAL NO. 1451 OF 1997
with
CIVIL APPLICATION NO. 11524 OF 1997

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the Civil Judge? : NO

NANDLAL BAVANJIBHAI POSIYA

Versus

DIRECTOR OF AGRICULTURE MARKETING & RURAL FINANCE

Appearance:

MR KS ZAVERI, MR ANSHIN H DESAI for Petitioners

MR TUSHAR MEHTA for Appellants

MR B.S. PATEL for Respondents
MR B.M. MANGUKIYA for Respondent
MR A.D. OZA, GOVT. PLEADER for respondents

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE N.G.NANDI

Date of decision:/02/2002

COMMON C.A.V. JUDGEMENT
(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. All these cases have been placed for hearing and decision before this Full Bench of Three Judges, on the order of reference made by the learned Single Judge in Special Civil Application Nos. 7278 of 2001 and 5120 of 2001 on 27-09-2001.

#. The Letters Patent Appeal No. 1177 of 2001 arises out of an order of status quo passed by the learned Single Judge in Special Civil Application No. 9842 of 2001. Special Civil Application No. 5120 of 2001 and Letters Patent Appeal No. 1177 of 2001 are cognate matters concerning moving and passing of no confidence motion against the Chairman of Agricultural Produce Market Committee, Valsad. Special Civil Application No. 7278 of 2001 is also concerning moving and passing of no confidence motion against the Chairman of Junagadh Agricultural Produce Market Committee. Letters Patent Appeal No. 1451 of 1997 is concerning moving and passing of no confidence motion against the Chairman of Social Justice Committee under Section 123 of the Gujarat Panchayats Act, 1993. It is directed against the order of the learned Single Judge passed in Special Civil Application 3484 of 1997 in the case of Narmadaben V. Parmar v. Taluka Development Officer, Kheralu decided on 15-10-1997 and the judgment is reported in 1998(1) GLR 225.

#. A common question of general importance arises in all these cognate matters. The question raised on behalf of the petitioners/appellants is, whether in the absence of express provisions, for moving and passing of a no confidence motion against the Chairman/Vice Chairman of Agricultural Produce Market Committee under the Gujarat Agricultural Produce Markets Act, 1963 and the Rules framed thereunder and the Chairman of Social Justice

Committee under the Gujarat Panchayats Act and the Rules framed thereunder, such a motion can validly be passed.

#. The learned Single Judge by separate orders passed in Special Civil Application No. 5120 and 7278 of 2001 concerning Valsad and Junagadh Market Committees respectively found that the decision of the learned Single Judge (M.S.Shah, J) in the case of Narmadaben V. Parmar (supra) in which reliance was placed on the Division Bench decision of this Court in the case of Chimanbhai R. Patel v. Anand Municipality and others reported in 1983 (1) GLR 67 is in conflict with the opinions expressed by other High Courts, i.e. Hindurao Balwant Patil and another v. Krishnarao Parshuram Patil and others reported in AIR 1982 Bombay 216 and Full Bench of Punjab and Haryana High Court in the matter of Jagdev Singh v. The Registrar, Cooperative Societies, Haryana and others reported in AIR 1991 P&H 149.

#. At the out set, we consider it appropriate to record that as on the question raised before the learned Single Judge the earlier Single Bench decision of this Court in Narmadaben V. Parmar (supra) was relied on, in which reliance was placed on Division Bench decision of this Court in Chimanbhai R. Patel (supra) which was binding precedent on her, an order of reference to a Bench larger than of Two Judges was not required, unless the learned Single Judge would have expressed a dissenting opinion on the question of law involved in the case. None the less, since both the Letters Patent Appeals and Special Civil Applications raising a question of law of general importance have been placed before us, we proceed to decide the same on merits.

#. Before dealing with the facts of each case in detail, we may take up first for decision the common question of law raised in this batch of Petitions and Appeals.

#. A brief survey of the relevant provisions of the Gujarat Agricultural Produce Markets Act, 1963 and the Gujarat Agricultural Produce Market Rules, 1965 is necessary to consider the question raised on the subject of passing of no confidence motion against the holder of elective Office of Chairman and Vice Chairman of Market Committees. As the Preamble shows, the Act proposes to consolidate and amend the law relating to the regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Gujarat.

#. Section 2 contains the definitions of "agricultural produce", "agriculturist", "broker", "market", "market

area" and other expressions used in the Act. Clause (xiv) of Section 2 defines "market committee" to mean a market committee established or deemed to be established under this Act.

#. Section 11 of the Act provides that Market Committee shall consist of (i) eight agriculturists to be elected by members of managing committees of cooperative societies dispensing agricultural credit in the market area; (ii) four members to be elected in the prescribed manner from amongst themselves by the traders holding general licences; (iii) two representatives of the cooperative marketing societies situate in the market area and holding general licences to be elected from amongst the members of the managing committees of such societies; (iv) one member to be nominated by the local authority; and (v) two members to be nominated by the State Government.

##. A Market Committee constituted under Section 11 has to elect from amongst its members belonging to the class of agriculturists, traders or representatives of cooperative marketing societies, its Chairman and Vice Chairman.

##. Under Section 18, business of the Market Committee has to be conducted in accordance with the Rules which may also prescribe the quorum at the meetings.

##. Section 19 provides that every contract entered into by the Market Committee shall be in writing and shall be signed on behalf of the Market Committee by the Vice Chairman and two other members and it is only such contract when so executed shall be binding on the committee.

##. Section 17 to 19, being relevant for the decision of this batch of cases are quoted below:

"17.(1) Every market committee shall elect one of its members from the members of the class specified in clauses (i), (ii) and (iii) of sub-section (1) of section 11 to be its Chairman and another member to be its Vice Chairman in such manner as may be prescribed.

(2) The Chairman or Vice-Chairman may resign from office by tendering his resignation in writing to the market committee but it shall not [take effect until it is accepted by the Director or on the expiry of sixty days from the date of tendering the resignation whichever event occurs

earlier.

(3) A temporary vacancy in the office of the Chairman or Vice-Chairman shall be filled in such manner as may be prescribed.

(4) The Chairman and Vice-Chairman shall exercise such powers and perform such duties and hold office for such terms as may be prescribed.

18. Save as otherwise provided in this Act, the business of a market committee (including the holding of its meeting) shall be conducted in accordance with the rules, which may also prescribe the quorum at meetings.

19. Every contract entered into by a market committee shall be in writing and shall be signed on behalf of the market committee by its Chairman and two other members, and no contracts not so executed shall be binding on it."

##. A reference has also been made on behalf of the petitioners to the provisions of Section 13 which provide for removal of members of Market Committee by the Director on recommendations supported by 2/3rd of the members of the committee on the ground of neglect or misconduct in discharge of duties or disgraceful conduct or incapacity to perform duties as member. Section 13 having been relied upon, the same is reproduced as under:

"13(1) The Director may, on the recommendation of the Market Committee supported by at least two-thirds of the whole number of members by an order remove any member of the market committee elected or nominated under this Act, if after holding such inquiry as he may deem fit, the Director is of the opinion that such member has been guilty of neglect or misconduct in the discharge of his duties or of any disgraceful conduct or has become incapable of performing his duties as a member:

Provided that no resolution recommending the removal of any member shall be passed by the market committee unless the member to whom it relates has been given a reasonable opportunity of showing cause why such recommendation should not be made;

Provided further no order for removal of the member shall be passed by the Director unless the member has been given a reasonable opportunity of being heard.

(2) A member so removed may, within 30 days of

the date of communication thereof to him, make an appeal to the State Government.

(3) The decision of the State Government on appeal made under sub-section (2) and, subject thereto, the decision of the Director under sub-section 91), shall be final."

##. Section 59 confers Rule making power on the State Government for the purpose of carrying out the provisions of the Act. In exercise of the Rule making power under Section 59, the State of Gujarat framed Gujarat Agricultural Produce Markets Rules, 1965. Procedure for election to the Market Committee is contained in Rules under Part III. The procedure for election to Chairman, Vice Chairman to Market Committee and appointment of Secretary, Officers and servants are contained under Part IV in Rules 31 to 41.

##. Under Rule 31, soon after constitution of a Market Committee, the Director himself or through his delegate may call a meeting of Market Committee to elect its Chairman and Vice Chairman from amongst members specified in clauses (i) to (iii) of subsection (1) of Section 11. Subrules (1) to (11) of Rule 31 contain detail procedure for conducting elections to the Office of Chairman and Vice Chairman. What is to be noted is that Chairman and Vice Chairman are elected by simple majority. Rule 33 which is directly on the point raised, fixes a term of two years for Chairman and Vice Chairman. It also provides for contingencies in which the Chairman and Vice Chairman shall cease to hold office and that the vacancy may be filled by fresh election.

##. Rule 33 being directly on issue deserves to be reproduced in full:

"33. Term of office and casual vacancy in the office of Chairman and Vice-Chairman.-(1) Any person elected as Chairman or Vice Chairman shall hold office for two years from the date of his election as Chairman or Vice-Chairman as the case may be:-

Provided that on the expiry of the term of office he shall continue to carry on the current duties of the Chairman, or Vice-Chairman, as the case maybe, till a new Chairman or Vice-Chairman, as the case may be, is elected and takes over charge of his duties:

Provided further that if such person ceases to be a member of the market committee, he shall cease to hold the office of the Chairman or

Vice-Chairman as the case may be.

(2) In the event of the expiry of the term of Office of the Chairman or the Chairman dying, resigning or ceasing to hold the office for any reason before the expiry of his term of office, the Director, or any person, authorised by the Director in this behalf shall call a meeting of the market committee to elect another person as Chairman, from amongst its members of the class specified in clauses (i), (ii) and (iii) of sub-section (1) of section 11. The Director or the person so authorised shall preside over such meeting but shall not vote. Every Chairman elected under this sub-rule to fill a casual vacancy shall hold office for so long as the chairman in whose place he is elected would have held it if the vacancy had not occurred.

(3) In the event of the expiry of the term of office of the Vice-Chairman or the Vice-Chairman, dying, resigning or ceasing to hold the office for any reason before the expiry of his term of office, the Chairman, shall call a meeting of the market committee to elect another person as Vice-Chairman from amongst its members of the class specified in clauses (i), (ii) and (iii) of sub-section (1) of section 11. The Chairman shall preside over such meeting and shall be entitled to vote. Every Vice-Chairman elected under this sub-rule to fill a casual vacancy shall hold office for so long as the vice-Chairman in whose place he is elected would have held it if the vacancy had not occurred.

(4) Subject to the provisions of sub-rule (2) and (3), the provisions of rule 31, shall so far as may be, apply to the election of a Chairman or Vice-Chairman to fill up a temporary vacancy under this rule."

##. Rule 35 contains the procedure for conducting business of the Market Committee through meetings. Sub-rule (6) of Rule 35 provides that 1/3rd of the number of members of the Market Committee shall form a quorum for meeting of the Market Committee.

##. One more relevant provision is Rule 32 which provides the functions and powers of Chairman and Vice-Chairman and reads thus:-

"32. Functions and powers of the Chairman and Vice-Chairman.-The Chairman or in his absence the Vice-Chairman, shall subject to these rules and

directions if any given by the market committee, control and supervise the work of the market committee. The Chairman or in his absence the Vice-Chairman shall (i) preside over the meetings of market committee and conduct business at such meetings, (ii) watch over the financial and executive administration of the market committee, (iii) exercise supervision and general control over the acts and proceedings, of the employees of the market committee in matters of executive administration and in matters concerning the accounts and records of the market committee, and (iv) direct in cases of emergency the execution or stoppage of any work on the doing of any act which requires the sanction of the market committee."

##. On these relevant provisions of the Act and the Rules of Agricultural Produce Markets, the petitioners/appellants herein, who are facing or have faced no confidence motion for their removal from elected offices the learned counsel raise contentions as under:

##. It is submitted by learned counsel Shri K.S. Zaveri, Shri Nirupam Nanavati and Shri Tushar Mehta, who addressed the Court separately, that right to elect a leader of statutory body is essentially a statutory right conferred upon the electorate and can be exercised only in the manner as provided by the statutory provisions. The right to move and pass a no confidence motion, not being a common law right, cannot be inferred as an implied right, without existence of provisions in that behalf, in the law governing the constitution and functioning of such bodies. It is further submitted that whenever Legislature intended to confer a right on the electorate to recall or remove a person elected, it has specifically and unequivocally provided and conferred such right statutorily. Reference is made to Sections 56, 60 and 84 of the Gujarat Panchayats Act, 1993. Reading those provisions, it is pointed out that they specifically confer statutory powers upon the members of the Panchayat to move a motion of no confidence against the Sarpanch or the President, as the case may be, respectively of the Gram, Nagar and District Panchayat, while also safeguarding the possibility of the provisions being misused and seeking to protect the statutory tenure of an elected President being curtailed on extraneous grounds. For this purpose, a stringent provision is made providing that though such Sarpanch or President is elected by simple majority, he can be removed by a motion of no confidence passed by 2/3 majority and that too of

total number of members (and not 2/3rd number of members present and voting in the motion).

##. So far as the no confidence motion moved and passed against the Chairman of Social Justice Committee of Taluka (which is the subject of LPA No. 1451/97 arising out of SCA No. 3484/97) is concerned, the learned counsel Shri Tushar Mehta referred to the provisions of Section 123 and 145 of the Gujarat Panchayats Act, 1993 to point out that both the provisions provide for constitution, tenure, functions etc of various committees to be constituted under Taluka Panchayats and District Panchayats. Attention is also invited to Sections 126 and 140 of the Gujarat Panchayats Act, 1993. It is pointed out that the procedure in respect of meetings of statutory committees is left to be provided by way of subordinate legislation in the form of statutory rules. Comparing provisions of the Gujarat Panchayats Act, it is sought to be demonstrated that while Sections 56, 70 and 84 provide for passing of no confidence motion, against Sarpanch or President, as the case may be, only by 2/3rd majority, Sections 96, 127 and 151 of the Act respectively for Gram, Taluka, and District Panchayats provide that all questions are to be decided by majority of votes and further confer power upon the President who presides over meetings to exercise and cast vote. Thus, reading the relevant provisions mentioned above of Agricultural Produce Markets Act and the Rules framed thereunder and the Gujarat Panchayats Act, the principal contention advanced is that whenever the competent legislature, has, in its wisdom, conferred right to move and pass no confidence motion upon the electorate to recall/remove the leader elected by them, the Legislature has enacted stringent procedural provisions laying down the manner of moving the motion, the strength required for moving the motion, corresponding right upon the elected persons to represent their views against the motion, strength required for passing the motion and also a provision that such a motion even if passed shall not take effect before three days of its passing.

##. Learned counsel Shri Tushar Mehta in support of his argument in LPA No. 1451/97 concerning passing of no confidence motion against the Chairman of Social Justice Committee of Taluka Panchayat, Kheralu submits that since the term of the Social Justice Committee is already over, the appeal on facts has been rendered infructuous. But since the Appeal is directed against the order of the learned Single Judge deciding an important question of law of moving and passing of a no confidence motion against Chairman of Social Justice Committee of Taluka

Panchayat, it is necessary to press the Appeal, as the question is of recurring nature and one of interpretation of the provisions of the Gujarat Panchayats Act and the Rules. Elaborating his argument on the provisions of Panchayats Act and the Rules, learned counsel Shri Tushar Mehta in LPA 1451/97 submits that considering the scheme of the Act, the object behind providing for the statutory committees and the scheme of the above quoted provisions, it is clear that Legislature could never have envisaged a situation whereby though a Sarpanch or President can be removed by motion of no confidence only under specially framed stringent provisions, the Chairpersons of statutory committees can be so removed by a simple majority, without any stringent procedural safeguards, statutorily providing and permitting the person facing such motion even to exercise his casting vote. It is argued that the legislative intent is apparent by omission to make provisions for such removal/recall. It is a conscious and deliberate omission and therefore such a right cannot be read either as an implied right or an inherent right. On this aspect, it is further argued that even if it is assumed that there is a casus omissus or an inadvertent lapse in the provisions of the Act, such provision or principle cannot be read or supplied by the Court as that would be encroaching the sphere of legislation. It is submitted that such a right of passing no confidence motion cannot be inferred even by implication from the provisions of the Act, may be, that without such a right, sometimes, the elected holder of office losing confidence of the elected body finds it difficult to function efficiently.

##. Reliance is placed on the "Principles of Statutory Interpretation" by Justice G.P. Singh 2001 Edition pages 57 to 62, Crawford's "Statutory Interpretation" pages 269 to 272 and Craise on "Statute Law". Learned counsel argued that the omission in not providing for a power of moving and passing no confidence motion appears to be a deliberate legislative omission. It may be with the object of conferring unrestricted and uninterrupted tenure upon the person who is elected as the Chairperson. It is found necessary to give such an unrestricted and fixed tenure to the Chairperson so that he may not be forced to succumb to the politics of pulls and pushes of those who have elected him and he would be in a position to plan and implement the programmes, policies and causes in a phased manner spread over during his tenure and to ensure implementation of programmes and policies of the Social Justice Committee.

##. It is submitted that there are sufficient safeguards

in the provisions of the Act to control the action of such Chairperson, if his acts are found either illegal, contrary to the provisions of the Act or against the interest of the body. These powers are conferred on the State Government and its Authorities to check misuse of power by the Chairperson.

##. Learned counsel Shri K.S. Zaveri and Senior counsel Shri Nirupam Nanavati appearing respectively for Chairmen of Market Committees in Valsad and Junagadh have also made submissions on similar lines and placed reliance on several decisions cited at the Bar, of which the following decisions are directly on the point and need to be discussed.

##. Heavy reliance is placed on the Division Bench decision of Andhra Pradesh High Court in the case of Veeramachaneni Venkata Narayana vs. The Deputy Registrar of Cooperative Societies, Eluru, West Godavari District and others reported in 1975 ILR 242; Full Bench decision of Punjab and Haryana High Court in the case of Jagdev Singh v. The Registrar, Cooperative Societies, Haryana and others reported in AIR 1991 P&H 149; Division Bench decision of Bombay High Court at Nagpur Bench in the case of Jehangir Bhikaji Panthaki vs. Corporation of the City of Nagpur reported in 1960 LLJ 99 and Division Bench decision of Bombay High Court in the case of Hindurao Balwant Patil and another v. Krishnarao Parshuram Patil and others reported in AIR 1982 Bombay 216. On the point of settled proposition that right to election is neither a fundamental or common law right, but it is a statutory right, reliance is placed on a decision of the Supreme Court in the case of Mohan Lal Tripathi v. District Magistrate, Rae Bareilly and others reported in AIR 193 SC 2042.

##. Learned counsel for the petitioners and the appellants question the correctness of the judgment of learned Single Judge in the case of Narmadaben (supra) reported in 1998 (1) GLR 225 which is the subject matter of LPA No. 1451/97 before us. It is submitted that the learned Single Judge in reading a provision of no confidence motion in the Gujarat Panchayats Act and Rules for its application to Chairman of Social Justice Committee, wrongly took recourse to the provisions of Section 16 of the General Clauses Act, and committed an error in relying on overruled decisions of Punjab and Haryana High Court and Andhra Pradesh High Court. It is pointed out on behalf of the petitioners that Punjab and Haryana decision reported in the case of Haji Anwar Ahmed Khan vs. The Punjab Wakf Board and others AIR 1980 P&H

306 has been overruled in the case of Jagdev Singh v Registrar, Cooperative Societies Haryana and others AIR 1991 Pun. & Haryana 149 and N. Venkataratnam Naidu vs. The District Collector, Nellore and others AIR 1972 A.P. 349 relied by the learned Single Judge has been overruled in Veeramachaneni Venkata Narayana vs. The Deputy Registrar of Cooperative Societies, Eluru, West Godavari ILR 1975 AP 242.

##. We have also heard learned counsel Sr. Counsel Shri B.S. Patel and Shri Mangukia appearing for the respondents representing those who had moved the no confidence motion. On behalf of the private respondents, the reasoning and ratio of the decision of learned Single Judge (M.S.Shah, J) in Narmadaben case (supra) has been supported and it is pointed out that learned Single Judge has in coming to his conclusion placed reliance on a Division Bench decision of this court in the case of Chimanbhai R. Patel vs. Anand Municipality reported in 1981 (1) GLR 67. From the relevant provisions of the Agricultural Produce Markets Act and the Panchayats Act, learned counsel of the private respondents submitted that the right to elect is a statutory right and in it is inherent the right to remove the person from the elected Office by those who have elected him. It is submitted that in the absence of express prohibition for moving and passing a no confidence motion, such right has to be inferred as a statutory right in elected bodies. It is submitted that any other interpretation would make the functioning of elected bodies sometimes difficult and many times impossible. It is submitted that confidence by the members in the elected Office is the core of democracy and no interpretation on the provisions of a statute should be placed by the Court, which would render the functioning of democratic body an impossibility. From the relevant provisions of the Act and the Rules quoted above of the Agricultural Produce Markets, it is sought to be pointed out that Chairman can be elected by a simple majority to the Agricultural Produce Market Committee and in the absence of prohibition or provisions for a particular majority for moving the motion and particular majority for passing it, a no confidence motion can be passed by simple majority, at one of the meetings like any other meetings of the Committee. It is submitted that under the Agricultural Produce Markets Act, the Chairman represents the whole Committee and under Section 19 a contract by the Market Committee has to be signed by him along with two other members. Rule 32 provides for his functions and powers which include not only presiding over the meetings of Market Committee, but also to watch over the financial and executive

administration of the Market Committee, exercise supervision and general control over the acts and proceedings of the employes of the Market Committee in matters of executive administration and concerning accounts and records. He has also extraordinary powers, in case of emergency, on execution or stoppage of any work or doing of any act which may subsequently require the sanction of the market committee. The learned counsel for the private respondents submitted that keeping in view the nature of Office of the Chairman and Vice Chairman, his duties, functions and powers as are conferred on him under the Act and specifically under Rule 32, interpreting the provisions of the Act to find in it complete omission of passing of a no confidence motion by the members would be derogatory to the smooth functioning of the committee. It is submitted that enjoyment of confidence of the members of the committee by the Chairman/Vice Chairman is necessary for him to lead the committee and carry on the functions of the Act and filfill its purposes. An attempt was made from the provisions of the Act and the Rules pertaining to Market Committee to show that without supplying any omission or reading any provision into the Act and the Rules, this Court can come to the conclusion that the members who have elected the Chairman and the Vice Chairman have a right to remove/recall them for loss of confidence and it is submitted that recourse to Section 16 of the General Clauses Act was rightly made by the learned Single Judge (M.S.Shah, J).

##. On behalf of the respondents heavy reliance is placed not only on the decision of the learned Single Judge (M.S. Shah, J) and decision of Division Bench of this Court in the case of Chimanbhai R. Patel vs. Anand Municipality 1983 (1) GLR 67, but also on the Division Bench decision of Delhi High Court in the case of Bar Council of Delhi vs. Bar Council of India reported in AIR 1975 Delhi 200. In support of the submission that Section 16 of the General Clauses Act can be taken recourse of for reading in the statute a right to remove by no confidence motion as included in right to elect, reliance is placed on decision of Federal Court reported in Kutoor Vengayil Rayarappan Nayanar v. Kutoor Vengayil Valia Madhai Amma and others AIR 1950 FC 140 in which Section 16 of General Clauses Act was held applicable for removal of a receiver by the Court under Order 40 Rule 1 of C.P.C.

##. Right to participate in election, as has been reiterated by the Supreme Court in the case of Mohan Lal Tripathi (supra) AIR 1993 SC 2042, is neither a

"fundamental right" nor "common law right", but a special right created by the statute. It is observed thus:-

> It is a "political right" or "privilege" and not a "natural", "absolute", or "vested right". Concepts familiar to common law and equity must remain stranger to election law unless statutorily recognised. Right to remove an elected representative, too must stem out of the statute, as "in absence of a constitutional restriction, it is within the power of a legislature to enact a law for the recall of officers. Its existence or validity can be decided on the provisions of the Act and not as a matter of policy. In modern political set up direct popular check by recall of elected representative has been universally acknowledged in any civilized system. The efficacy of such a device can hardly admit of any doubt, but how it should be initiated, what should be the procedure, who should exercise it within the ambit of constitutionally permissible limits falls in the domain of legislative power."

##. Taking guidance from the above authoritative pronouncement of the apex court, we have to construe the provisions. First we take up the case under Agricultural Produce Markets Act to examine whether any statutory right exists in the members of the Market Committee to recall or remove its Chairman/Vice Chairman by moving a no confidence motion.

##. The arguments advanced on behalf of the petitioners appear plausible that since in the Agricultural Produce Markets Act there is no specific right given and procedure provided for moving and passing a no confidence motion by the members of the Market Committee, such provision cannot be read by implication. In this respect, it is also argued that the foremost requirement of passing of a no confidence motion is that the person against whom the motion is moved and may be passed must be given a reasonable opportunity to participate in the proceedings of the motion so as to place his point of view and persuade or convince the members to drop the motion and repose confidence in him. On behalf of the petitioners/appellants it is submitted that whereever Legislature desired that such a right of recall or removal of a Chairman or Vice Chairman should be provided to the members of the elected body, a detail procedure with requisite majority for moving and for passing it has been laid down coupled with right of participation and

hearing to the Chairman/Vice Chairman against whom the motion is moved and likely to be passed. As has been mentioned above, relevant provisions of Municipalities Act and Panchayats Act containing detail procedure for passing no confidence motion were pointed out to us and were read with various decisions rendered on those provisions by this Court and the apex court. Comparing the provisions of Agricultural Produce Markets Act with Acts governing other local authorities like Municipalities and Panchayats, the contention advanced on behalf of the petitioners is that in the absence of express provision regulating the procedure for moving and passing a no confidence motion with participation of person against whom the motion is moved, such a provision or right to the members should not be read by implication, because right to election and recall is merely a statutory right and not a "fundamental right" or "common law right". It is also argued that the safeguard which is a part of principle of natural justice of providing opportunity to the person against whom motion is moved of participation and the hearing is not to be found in the provisions of Agricultural Produce Markets Act and the Rules.

##. These arguments advanced on behalf of the petitioners as stated above would require closer and deeper examination of the provisions of Agricultural Produce Markets Act and the Rules. In interpreting a statute or statutory provision under it, recourse to comparable legislation is permissible as an external aid for interpretation of statute, but where in the statute itself there is sufficient internal aid reference or recourse to comparable legislation may not be necessary. Election of Chairman or Vice Chairman to the Market Committee is provided in Section 17 of the Act. Election of Chairman and Vice Chairman does not require any particular specified majority of 1/3rd or 2/3rd. A Chairman or Vice Chairman is elected by simple majority in accordance with Rule 31, which permits participation of the Chairman or person authorised by him for the purpose of election.

##. The procedure for convening meeting and transacting business of the Committee is to be found in Rule 35. Sub-rule (5) of Rule 35 which is quoted below allows business to be transacted by the committee by the vote of majority of the members present at the meeting:-

"35(5) All questions which may come up before the committee at any meeting shall be decided by the vote of the majority of the members present at

the meeting and in every case of equality of votes the person presiding over a meeting shall have and exercise a second or casting Vote."

##. Under sub-rule (6) of Rule 35, 1/3rd of the number of members of the Market Committee are to form quorum for the meeting. If there is quorum available for a particular business in a meeting, all decisions can be taken by vote of the majority of the members. Under sub-rule (7) of Rule 35, the Director is authorised to attend any meeting of the Market Committee, although he will not have any right to vote. It is obligatory for the Secretary under sub-rule (8) to attend every meeting of the Market Committee, to express his views and explain any matter under discussion, although he also has no right to vote or make any proposition. Sub-rule (1), (5), (6) (7) and (8) of Rule 35 which are relevant for the purposes of these cases are quoted here as under:-

"35. Meeting of the market committee-(1) Every meeting of the Market Committee other than the one referred to in sub-rule (1) or rule 31 of sub-rule (2) of rule 33 shall be presided over by the Chairman or in his absence by the Vice-Chairman or in the absence of both by a member elected by the meeting to preside for the occasion.

(5) All questions which may come up before the committee at any meeting shall be decided by the vote of the majority of the members present at the meeting and in every case of equality of votes the person presiding over a meeting shall have and exercise a second or casting Vote.

(6) One third of the number of the members of the Market Committee shall form a quorum for the meeting of the Market Committee. If there be no quorum, the meeting shall be adjourned to another date and at the adjourned (the business) of the original meeting shall be disposed of, whether there is a quorum or not.

(7) The Director or any person authorised by him in this behalf shall be entitled to attend any meeting of the Market Committee but they shall not be entitled to vote.

(8) The Secretary shall attend every Meeting of the Market Committee and may express his views or explain any statement of facts, in regard to any subject under discussion but he shall not be entitled to vote upon, or make, any proposition at such meeting."

##. Rule 33 and its subrules already reproduced in earlier paragraphs above are most important to be examined for deciding the main question of existence or otherwise of a right to the members of the Market Committee to move and pass a motion of no confidence.

##. Sub-rule (1) of Rule 33 prescribes two years tenure to Chairman or Vice Chairman and he can continue in office until new incumbent takes over on expiry of his term. First proviso to Rule 33(1) provides that Chairman or Vice Chairman shall continue in Office to discharge current duties, till a new Chairman or Vice Chairman is elected and takes over charge. Second proviso to sub-rule (1) of Rule 33 is pertinent, which says "provided further that if such person ceases to be a member of the Market Committee, he shall cease to hold the office of Chairman or Vice Chairman, as the case may be". The second proviso quoted above makes it explicit that continuance of membership of the Market Committee is necessary for holding the Office of Chairman or Vice Chairman as the case may be. It is only by virtue of his membership of the committee that a Chairman or Vice Chairman gets elected to those offices. In accordance with the provision of Section 13 a member of the committee can be removed by the recommendations of atleast 2/3rd of the whole number of members on the Committee, if the member is found guilty of neglect or misconduct in the discharge of his duty or of any disgraceful conduct or he has become incapable of performing his duties as a member. Proviso below sub-section (1) of Section 13 of the Act requires that resolution recommending removal of member has to be passed by the Market Committee, only after giving the concerned member a reasonable opportunity of showing cause, why such recommendation of the Director be not accepted. By second proviso of subsection (1) of Section 13, he is also required to be given a reasonable opportunity of being heard.

##. In the course of arguments on behalf of the petitioners/appellants, it was argued that such detailed procedure as is to be found for removal of a member under Section 13 of the Act is not provided for moving a no confidence motion against Chairman or Vice Chairman in the Agricultural Produce Markets Act or Rules.

##. Under Section 14 of the Act, several circumstances are stated under which an elected or nominated member shall cease to hold office and such circumstances inter alia include his cessation of membership by the electorate of which he was elected. If the member is of

the category under clause (i) of subsection (1) of Section 11, namely, an agriculturist, grant of traders license to him may result in cessation of his membership as an agriculturist, and if he is nominated by a local authority, his membership in the Committee ceases, if he ceases to be a councilor, or member of local authority or is granted a license of trading which would take him out of category of a nominee of the local authority.

##. Similarly the second proviso of sub-rule (1) of Rule 33 lays down that if a Chairman and Vice Chairman ceases to be a member of the Market Committee under circumstances like those mentioned in Section 13 and 14 of the Act, he would automatically cease to hold the Office of Chairman or Vice Chairman as the case may be.

##. Sub-rule (2) of Rule 33 needs critical examination, as it answers the question of existence of power of passing of no confidence in the Committee. Sub-rule (2) of Rule 33 reads:

> "In the event of the expiry of the term of office of the Chairman or the Chairman dying, resigning or ceasing to hold the office for any reason before the expiry of his term of office, the Director, or any person, authorised by the Director in this behalf shall call a meeting of the Market Committee to elect another person as Chairman, from amongst its members of the class specified in clauses (i), (ii) and (iii) of sub-section (1) of Section 11."

Sub-rule (2) of Rule 33 further reads:

> "The Director or the person so authorised shall preside over such meeting but shall not vote. Every Chairman elected under this sub-rule to fill a casual vacancy shall hold office for so long as the Chairman in whose place he is elected would have held it if the vacancy had not occurred."

##. Similar provision is to be found in sub-rule (3) of Rule 33, stating that in the event of casual vacancy in the office of Vice Chairman instead of Director, the Chairman shall call a meeting of the Market Committee, to elect another Vice Chancellor for filling the vacancy.

##. The language of sub-rule (2) of Rule 33 is required to be noted and to be applied to various situations in which office of Chairman or Vice Chancellor may fall

vacant. The contention advanced on behalf of the petitioners was that office of Chairman or Vice Chairman may fall vacant only by death, resignation, or ceasing to hold office by him for reason of loss of his membership of the committee in the circumstances like Section 13 and 14 of the Act.

##. The contention advanced by petitioners on interpretation of second proviso to subrule (1) and subrule (2) of Rule 33 does not seem acceptable. What is to be noted from the plain language of sub-rule (2) of Rule 33 is that after the words like "dying", "resigning", the expression used is "or ceasing to hold office for any reason before the expiry of his term of office". The above expression "ceasing to hold the office for any reason" cannot be restricted to merely reason contained in second proviso to sub-rule (1) of Rule 33. Under the second proviso, the Chairman or Vice Chairman, as the case may be, shall cease to hold his respective office, if he ceases to be a member of the Market Committee. If the Legislature wanted to restrict the application of sub-rule (2) on matter of filling casual vacancy only to the event contemplated in second proviso to sub-rule (1) of Rule 33, i.e. cessation of his office; consequent upon cessation of his membership of the committee, sub-rule (2) of Rule 33 would have been worded differently. In that situation, the subordinate legislation under sub-rule (2) of Rule 33 could have very easily used the expression "ceasing to hold the membership of the Market Committee in terms of second proviso to Rule 33". Instead the use of the wider expression "ceasing to hold the office for any reason" covers situations and contingencies inclusive of the contingency covered by second proviso to sub-rule (1) of Rule 33, namely, cessation of membership of the committee.

##. A vacancy in the office of the Chairman and Vice Chairman may arise by death, resignation, or loss of membership of the committee, but casual vacancy may also arise for many conceivable reasons, like conviction and imprisonment of the holder of elected office, by his physical or mental disability, by his continuous absence and want of whereabouts, and many other similar situations, including his removal by no confidence motion. The language in sub-rule (2) of Rule 33 uses a wide expression "ceasing to hold office for any reason" and second proviso under sub-rule (1) of Rule 33 is merely one such reason along with death or resignation.

##. In our considered view, in the expression "ceasing

to hold office for any reason" would be included "removal or recall of Chairman or Vice Chairman by moving and passing of a no confidence motion against him". This right of members to remove holder of elected office for loss of confidence is to be found in the provisions of the main Act and the Rules, and it is not to be inferred by implication as part of a common law right. Where a statute itself permits passing of a no confidence motion, like any other business transacted in the meetings of the committee by simple majority, it is not necessary for us to go to the external aid of comparing other legislations in Municipalities and Panchayats Acts, and on that comparison to come to the conclusion that such right in the elected body of its members does not exist under the provisions of the Agricultural Produce Markets Act.

##. As we have taken note of the Rules and quoted them above, election to the Office of the Chairman and Vice Chairman can be made by the members of the Committee with quorum of 1/3rd by simple majority. If the election to the Office can be made by 1/3rd members present as the quorum, by simple majority, a no confidence motion to remove or recall a member elected to the Office of Chairman or Vice Chairman by simple majority with same 1/3 quorum is permissible and not expressly prohibited by either the provisions of the Act or the Rules.

##. The learned Single Judge (M.S. Shah, J) in the order impugned in LPA No. 1451/97 rightly took recourse to Section 16 of the Bombay General Clauses Act:-

> "16. Power to appoint include power to suspend or dismiss. - Where, by any Bombay Act or Gujarat Act a power to make any appointment is conferred, then, unless a different intention appears, the authority having powers to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power."

##. The Division Bench of Bombay High Court in the case of Hindurao Balwant Patil and another v. Krishnarao Parshuram Patil and others reported in AIR 1982 Bombay 216 did not apply the provisions of Section 16 of the General Clauses Act to a similar situation while considering provisions of Maharashtra Cooperative Societies Act. It held that Section 16 is restricted in its application to holders of non-elective offices. From the language of Section 16, it is not possible to give the Section such restricted application. As has been rightly held by the learned Single Judge (M.S. Shah, J)

that election to the office of Chairman and Vice Chairman is one of the modes of appointment, and application of Section 16 of General clauses Act cannot be restricted to non-elective offices. Decision of Federal Court (which was the Apex Court before the Constitution) in the case of Kutoor Vengayil Rayarappan Nayanar v. Kutoor Vengayil Valia Madhai Amma and others AIR 1950 FC 140 supports our conclusion. In that case the provisions of Section 16 of the General Clauses Act were made applicable to read in the power of court under Order 40 Rule 1 of C.P.C. `to appoint a receiver' `the power to remove him'.

##. Our conclusion, therefore, is that moving of a no confidence motion and passing the same by simple majority is permissible and not expressly prohibited by either the provisions of the Agricultural Produce Market Act or the Rules. In fact, as we have read and construed, under Rule 33(2) and Rule 35 (quoted above) passing of no confidence motion against Chairman and Vice Chairman is one of the reasons contemplated in the Rules by which vacancy is created in those offices and which are required to be filled by the Director by calling a meeting of the Committee for the purpose.

##. On behalf of the petitioners, it is urged that under the Agricultural Produce Markets Act and the Rules, no procedure has been indicated for moving and passing a no confidence motion and for grant of opportunity to the holder of the elected office against whom the motion is moved. As we have examined the provisions of the Act and the Rules in detail and discussed them above, the contention cannot be accepted that no procedure is indicated under which a no confidence motion can be moved and passed. It is true that there is no express provision for a minimum prescribed number for moving a motion by the members and there is also no prescribed majority by which it can be passed, but as we have held above, in the absence of such a provision of a requisite majority for passing and moving it, no confidence motion like any other subject or agenda in a meeting, can be passed by simple majority. As we have held above, if the election in a meeting with requisite quorum can be made by simple majority to the post of Chairman/Vice Chairman, a no confidence motion can be moved and be passed by simple majority against the holder of the post.

##. So far as the procedure is concerned, Rule 35 of the Agricultural Produce Markets Act which contain a detailed procedure is applicable for passing a no confidence motion. The procedure of meeting for electing Chairman and Vice Chairman, the functions and powers of the

Chairman and the Vice Chairman and other incidental provisions for conducting the business of the committee are contained in Part IV of the Rules. Rule 76 empowers the Director of Agricultural Marketing and Rural Finance, Gujarat State, to call meeting of a Market Committee, on requisition from at least half of the members of the Market Committee or on his own motion, if he is satisfied that there is an urgency for calling a special meeting of the Market Committee for considering matter of immediate importance of the working of the market. Rule 76 deserves to be quoted as this is the provision which can apparently be invoked by the members proposing to move a motion of no confidence against the holder to the elected office of Chairman and Vice Chairman:-

> "76. Authority empowered to call meeting of Market Committee.-On requisition from at least half of the number of members of the Market Committee committee or of his own motion, the Director may, if he is satisfied about the urgency of the matter, call a special meeting of the Market Committee to consider matters of immediate importance for the working of the market."

##. Sub-rule (1) of Rule 35 states "every meeting of the Market Committee other than one referred to in sub-rule (1) of Rule 31 (i.e. for first election of the Chairman and the Vice Chairman) or sub-rule (2) of Rule 33 (for filling a vacancy in the office of Chairman and Vice Chairman through the Director) shall be presided over by Chairman, or in his absence by the Vice Chancellor or in the absence of both by a member elected by the meeting to preside for the occasion.

##. Sub-rule (1) of Rule 35 is available for passing a no confidence motion when it is moved. Such meeting, if the motion is against the Chairman and the Chairman is present, can be presided by himself, and if he is absent by the Vice Chairman. If both are absent, the meeting can be presided by a member elected by the meeting.

##. In the case of no confidence motion, if the Chairman or Vice Chairman as the case may be, is present in the meeting, he will have full opportunity to participate in the meeting and will get opportunity to speak on the no confidence motion and place his point of view before the members to regain confidence. Sub-rule (4) of Rule 35 provides "that the person presiding over the meeting shall be entitled to speak and vote on all questions at the meeting". This Rule permits Chairman or Vice

Chairman, as the case may be, if he is presiding the meeting to speak and vote. If he is not presiding the meeting, he is entitled to participate and speak qua member of the meeting. As in case of any other meeting, a meeting called for passing no confidence motion will also require three days clear notice with specification of time and place at which such meeting is to be held and all members including Chairman or Vice Chairman against whom no confidence motion is proposed are required to be served with the notice of the meeting. A copy of the notice of the meeting is also required to be sent to the Director or his authorised representative. Sub-rule (7) of Rule 35 provides, that the Director or his authorised representative shall be entitled to attend any meeting, but he shall not be entitled to vote. The presence of Director or his authorised representative in every meeting including in a meeting specially called for passing a no confidence motion, will ensure smooth holding of such a meeting with due participation of all the members and grant of opportunity to participate and speak to the holder of the elected office against whom the no confidence motion is proposed to be moved and passed. Under sub-rule (8) of Rule 35, it is obligatory for the Secretary of the committee to attend every meeting to express his views and explain facts concerning the topic or agenda under discussion. Secretary, is thus responsible for proper conduct of every meeting of the Market Committee, although, he has no right to vote or to make any proposal in the meeting.

##. The examination of the procedure of holding meeting under Rule 35 as discussed above, covers, in our considered opinion, a special meeting called by members for passing a no confidence motion by simple majority.

##. A contention was also advanced that there are no Specific Rules regulating the procedure of moving of a no confidence motion in a particular manner and in the prescribed form with stating grounds on which the motion is moved, as is to be found in the provisions of the Municipalities and Panchayats Acts, particularly in Education Committee of Panchayat. Reference in this respect is made to Gujarat Panchayats (Procedural) Rules 1997 which were published in the Gazette of Government of Gujarat Extraordinary Part IA No. 29 on 6-3-1997. (See 1997 GCD Gujarat Section Part II at page 147). On the basis of the above Procedural Rules applicable to Panchayats, it is pointed out that it is only against Sarpanch/President or Upa Sarpanch/Vice President (under rule 20) and against the Chairman of the Education Committee (Rule 48), that no confidence motion can be

moved in prescribed form A and B respectively provided under the Rules. On the basis of the prescribed form A and B for moving no confidence motion, it is pointed out that it contemplates specification of the reasons for moving the no confidence motion. Such a provision or procedure, it is contended, being absent in the Agricultural Produce Markets Act and Rules, a no confidence motion cannot be allowed to be moved without specification of reasons or grounds for moving the motion and without grant of opportunity to the holder of the elected office against whom motion is moved so as to allow him to meet those grounds and reasons to persuade the members to repose confidence in the holder of the office.

##. As has been held by us above, democratic institution transacts its business on majority opinion of its members. This is an unwritten Rule, tradition and work culture of every elected body. It is only when there is a departure from this tradition or unwritten Rule that Rules of business, bye-laws or statutes governing the democratic institutions may provide for particular majority of 2/3rd or less for taking decisions. Decision making process of democratic institution requires formation of opinion for resolutions by majority of its members. Enjoyment of confidence by the leader of the democratic body is essential in decision making process and it is more necessary for implementation of the decisions of the majority. Take for example that a particular decision is taken by majority, but due to lack of confidence enjoyed by the leader, the decision is not carried out, a conflict, and some times, a stalemate will be created in the working of the elected body. As has been quoted above, Section 19 of the Agricultural Produce Markets Act requires that every contract entered into by Market Committee shall be in writing and shall be signed on behalf of the Market Committee by its Chairman and two other members and no contracts not so executed shall be binding on it. A situation might arise where the Chairman, because he has lost confidence, is unable to obtain the signatures on a contract to be executed on behalf of the committee, although a resolution in favour or against such a contract had already been passed. Similarly, Rule 32 of the Agricultural Produce Market Rules confers powers for performing important functions by the Chairman and Vice Chairman, such as, to preside over the meetings, conduct business, watch over the financial and executive administration of the Market Committee, exercise supervision and general control over the acts and proceedings of the employees in matters of executive administration, and in case of emergency,

direct execution or stoppage of any work, which may require sanction of the Market Committee. If a Chairman or Vice Chairman has lost confidence of the members of the Committee, action taken by him under Rule 32 in discharge of his duties and functions will be criticised or opposed and will not get any support from the members. Thus, loss of confidence in the leader of an elected body would many times hamper smooth working of the elected body, and some times, may make it impossible for him to carry on the functions of the committee due to internal feuds and conflicts. The work culture of a democratic body inhers in it the right of its members to move a no confidence motion against their elected leader, which is a concomitant of the right to elect the leader. No confidence motion can be passed by simple majority against the holder of the elected office, who is elected by simple majority, unless the Rules of business or bye-laws or statute indicate a contrary intention or prohibit passing of a no confidence motion. We do not find any force in the submission made that no confidence motion has to be moved only on reasons to be specified in writing in the notice proposing the motion and has to be passed after grant of opportunity on those reasons to the holder of office against whom it is moved. Supreme Court had occasion in the case of Babubhai Muljibhai Patel vs. Nandlal Khodidas Barot and others reported in AIR 1974 SC 2105 to consider the nature and requirement of a no confidence motion in local bodies, particularly under Gujarat Municipalities Act, the provisions of which came up for consideration before it. Comparing `no confidence motion' with a `motion for censure', the Supreme Court observed thus:

> "There is no imperative requirement in the case of a motion of no confidence that it should be passed on some particular ground. There is nothing in the language of Section 36 of the Gujarat Municipalities Act reproduced earlier which makes it necessary to specify a ground when passing a motion of no confidence against the President. It is no doubt true that according to the form prescribed the ground for the motion of no confidence has to be mentioned in the notice of intention to move a motion of no confidence. It does not, however, follow therefrom that the ground must also be specified when a motion of no confidence is actually passed against a President. It is pertinent in this context to observe that there is a difference between a motion of no confidence and a censure motion. While it is necessary in the case of a censure

> motion to set out the ground or charge on which it is based, a motion of no confidence need not set out a ground or charge. A vote of censure presupposes that the persons censured have been guilty of some impropriety or lapse by act or omission and it is because of that lapse or impropriety that they are being censure. It may, therefore, become necessary to specify the impropriety or lapse while moving a vote of censure. No such consideration arises when a motion of no confidence is moved. Although a ground may be mentioned when passing a motion of no confidence, the existence of a ground is not a prerequisite of a motion of no confidence. There is no legal bar to the passing of a motion of no confidence against an authority in the absence of any charge of impropriety or lapse on the part of that authority. The essential connotation of a no confidence motion is that the party against whom such motion is passed has ceased to enjoy the confidence of the requisite majority of members."

##. From the observations quoted above, it is clear that no confidence motion does not require statement of any reasons for moving the motion nor does it require passing of motion by stating reasons for passing the same. As has been rightly emphasised by the counsel for the respondents, confidence in the elected holder of office is the soul of democracy. All democratic institutions function on mutual confidence between the members and their leader. Loss of confidence without anything else, which is based on objective basis, is sufficient to move the motion. The principles of natural justice are not breached where a no confidence motion is moved with due notice to the person against whom it is moved and he gets an opportunity in the meeting for passing the motion to participate and have his say to regain confidence of the elected body. Merely because in the Agricultural Produce Markets Act and the Rules, there is no Rule and Form prescribed for moving the motion with requirement of specification of reasons and grounds for moving and passing it, it cannot be held that a no confidence motion cannot be passed against the Chairman and Vice Chairman of Market Committee. Justice M.S. Shah in considering absence of similar express provision of no confidence motion against Chairman of Social Justice Committee in Gujarat Panchayats Act and the Rules, read and recognised such a provision, as a necessary adjunct of the power of committee to elect. In the case of Narmadaben (supra) reported in 1998 (1) GLR 225, the following quoted

observations of M.S. Shah, J. have our respectful approval, as it accords with the views expressed by us above:-

"I have heard the learned counsel for the parties at length. It is true that the provisions of the Act do not specifically provide for removal of the Chairman of the Committee by passing a vote of no-confidence. However, it is required to be noted that the provisions of Sec. 123(9)(b) provide for the term of the Committee making it co-extensive with the duration of the Panchayat which is five years. However, no term is provided for the office of the Chairman of the committee. There is, therefore, nothing in the provisions of Sec. 123 of the Act which gives any fixed term to the Chairman of the committee although the members of the Committee get term co-extensive with the duration of the Panchayat. If the legislature intended to confer any such fixed term on the Chairman of the Committee the legislature would have clearly provided so.

It is also true that there are specific provisions for removal of Sarpanch/Upasarpanch of the Gram Panchayat, President/Vice President of Taluka Panchayat under Secs. 56, 70 and 84 respectively but there is no such provision for chairman of any Committee. But Mr. Jani has rightly pointed out that in all those provisions specific provision is made requiring passing of no confidence motion by 2/3rd majority and not by a simple majority. It is a basic tenet of democracy that an elected body has the power to elect its office bearers and if the body is not held to have power to appoint or remove its office bearers, the body will never be able to enforce accountability or responsibility of its office-bearers, the body will never be able to enforce accountability or responsibility of its office bearers or control the action of its office bearers. For instance, if one looks to the constitution of the Social Justice Committee, it comprises of five members and if, as in the instant case, out of five members four members have no confidence in the Chairman and if this situation is allowed to continue till expiry of the term of the Committee (which event will take place in July 2000 in the instant case), there will be constant dead-lock and the Committee will not be able to function effectively and carry out

the duties assigned to it. It must, therefore, be held that the body which has power to elect its office bearers by a simple majority has also the inherent or implied power to remove them by provisions prescribing a special procedure or special requirement, such as the requirement for 2/3rd majority to remove the President/Vice President of the taluka Panchayat/District Panchayat."

##. Learned Single Judge M.S.Shah, J. in taking the above view placed reliance amongst many other decisions, mainly on the Division Bench decision of Delhi High Court, in the case of Bar council of Delhi vs. Bar Council of India reported in AIR 1975 Delhi 200. In Bar Council case, a similar question arose, as to whether, in the absence of specific provision under the Advocates Act, Chairman of Bar Council, can be removed by the members of the Bar Council, by moving a no confidence motion. The Division Bench of Delhi High Court took the view that the general or common law is that those who have elected have a right to remove the person elected by them, and if this general principle is to be departed from, the statute or law governing the elected body should contain such a provision indicating a contrary intention. In absence thereof, the general or common law will prevail, that those who elect can be removed by moving a no confidence motion. Such right is inherent in the elected body. Otherwise, holder of elected office would become irremovable, although, he has lost the confidence of the body and he is acting against the interest of the body. The following observations of Division Bench of Delhi in the case of Bar Council (supra) deserve to be quoted:

"The view expressed by the majority of the Bar Council of India that a rule cannot be made under Section 15 of the Advocates Act for the removal of the Chairman of the State Bar Council leads to the result that once elected such Chairman is irremoveable. He would go out of office only when the State Bar Council does at the expiry of its statutory tenure. Such a result can be justified only if the common law stated above has been changed by the statute. The view of the Bar Council of India is, on the other hand, based on the very silence of the statute on this point. We are of the opinion that such silence indicates that the common law regarding the removal of the holder of an office remains unchanged. The statute does not, therefore, have to say that the

> Chairman of the State Bar Council would be removable by a resolution of no-confidence. The reason is that such power of removal is inherent in the Bar council which elects its Chairman. The power given to the State Bar Council to elect its Chairman is the codification of only a part of the common law. Such codification does not change the other part of the common law which implies in the State bar Council the power to remove the Chairman so elected. Just as rules can be made under Section 15 to carry out the expressed power of the Bar Council to elect the Chairman, it would appear that rules may also be made to carry out the implied power of the State Bar Council to remove the Chairman. The two powers are inseparable in common law. They can be separated only by a statutory intervention. So long as this is not done, they would remain connected with each other even though only one of the powers, namely, the power of election has been made statutory while the other power, namely, the power of removal has been left to be implied. If such a power is not implied, the mere codification of the power to elect would result in a change in the common law. There is no warrant for implying such a change. On the contrary, the construction of the statute in the light of the common law implies such a power in the State Bar Council."

##. Taking somewhat a different view from the observations of the Delhi High Court in the case of Bar Council (supra), we have held that not as a common law right, but an inherent statutory right exists in the members of the elected body to remove its leader by no confidence motion in accordance with the same procedure by which he is elected and in the absence of contrary provision in the law governing such elected body, such right has to be read into the statute.

##. On behalf of the petitioners/appellants, heavy reliance has been placed on the Division Bench decision of Andhra Pradesh High Court (1975 ILR 242) and Full Bench decision of Punjab and Haryana High Court (AIR 1991 P&H 149). It is also pointed out that the learned Single Judge (M.S. Shah, J.) in his order impugned in the Letters Patent Appeal relied on the decision of Single Bench of Andhra Pradesh High Court (AIR 1972 AP 342) (supra) which was overruled by the Division Bench Decision (supra) and decision of Punjab and Haryana High Court which was overruled by the Full Bench decision

(supra) of the same Court.

##. The Division Bench decision of Andhra Pradesh High Court and Full Bench decision of Punjab and Haryana High Court arose from the provisions of Cooperative Societies Acts of the respective States. The courts by taking external aid of comparable laws applicable to other local bodies, in which provisions of no confidence with procedure of moving and passing it existed, came to the conclusion that absence of similar provisions in cooperative law indicates an intention contrary, and it is not permissible for the court to read provision of no confidence motion in cooperative law.

##. We do not consider it necessary to express any opinion on the correctness of the reasonings and conclusions contained in the decisions of Full Bench of Punjab and Haryana High Court and Division Bench decision of Andhra Pradesh High Court (supra), because we have construed the provisions of Agricultural Produce Markets Act and the Rules and the Panchayats Act and the Rules, as discussed above. Similarly, the decisions of Nagpur Bench of Bombay High Court (1960 LLJ 99) and Division Bench decision of Bombay High Court (AIR 1982 Bom 216) are not only distinguishable on facts, but to the extent they hold that provisions of Sections 16 of the General Clauses Act not applicable to elective office, we have expressed our respectful disagreement for the reasons mentioned above.

##. Our conclusion, therefore, both in relation to the Chairman and/or Vice Chairman of Market Committee under the Agricultural Produce Markets Act and the Rules and Chairmen of various Committees of Panchayats under the Panchayats Act and the Rules, is that if a holder of office is elected by simple majority by the body in requisite quorum, he can be removed or recalled by a simple majority, in the absence of any provision prohibiting such a course or prescribing any particular procedure of moving the no confidence motion with a particular majority and passing the same by a particular majority.

##. The decisions of Division Bench of Delhi High Court (AIR 1975 Delhi 200) relating to no confidence motion against Chairman of Bar Council and Division Bench decision of our own Court in Chimanbhai R. Patel (supra) (1983 (1) GLR 67) fully support the view taken by us and with which we have expressed our respectful agreement.

##. In construing provisions of law regulating the

constitution and working of an elected body, such interpretation should be preferred which ensures its smooth functioning, and any other interpretation which might create hindrance or stalemate in its functioning needs to be avoided.

##. In this batch of cases not only a common question of law has been referred to us for answer, we are also required to decide all the cases on merits. We shall therefore deal with the merits of each of the cases before us:

LETTERS PATENT APPEAL NO. 1451 OF 1997
WITH
CIVIL APPLICATION NO. 11524 OF 1997

##. Letters Patent Appeal No. 1451 of 1997 has arisen from the order of the learned Single Judge (M.S.Shah, J) (supra), the reasoning and conclusion of which we have approved and upheld. We have already dealt with the arguments advanced by Shri Tushar Mehta, learned counsel for the petitioner in which his submissions supported by the Rules framed under the Gujarat Panchayats Act were that no confidence motion in the Act has been provided only against the President, Vice-President, Sarpanch and Upasarpanch of the various Panchayats and against only Chairman of the Education Committee with Rules and Forms containing the procedure for moving such no confidence motion. The argument advanced and has already been considered above is that against the Chairman of Education Committee, no confidence motion, in the absence of provisions in the Act and Rules, could not be moved. The petitioner had approached in Special Civil Application No. 3484 of 1997 against calling meeting and passing of no confidence motion against Chairman of the Social Justice Committee. During pendency of the Special Civil Application No. 3484 of 1997 interim relief continued in favour of the petitioner under which he continued to discharge duties of Chairman of Social Justice Committee. After the learned Single Judge (M.S. Shah, J) dismissed the Petition by the order impugned in this Letters Patent Appeal, interim order was continued by the Division Bench, and as a result thereof learned counsel for the appellant now informs, that not only that the petitioner has completed his tenure in the Office of the Chairman of Social Justice Committee of the Taluka Panchayat, but even the term of the Taluka Panchayat was completed long back.

In the circumstances, the Letters Patent Appeal

and the Civil Application preferred therein have been rendered infructuous and are accordingly dismissed.

LETTERS PATENT APPEAL NO. 1177 OF 2001
IN
SPECIAL CIVIL APPLICATION NO. 9842 OF 2001

##. This Letters Patent Appeal has arisen from an interim order dated 23-10-2001 passed by the learned Single Judge refusing interim relief against passing of a no confidence motion against the petitioner as Chairman of the Market Committee, Valsad. Since by the same petitioner, after passing of no confidence motion, separate Petition (Special Civil Application NO. 5120 of 2001) has been filed and is being decided by us by this common judgment, it is not necessary to pass any separate order in this Letters Patent Appeal No. 1177/01 arising out Special Civil Application No. 9842/01 in which only an interim order refusing stay of calling meeting and order of status was granted.

Letters Patent Appeal No. 1177/01 is, therefore, disposed of in terms of the order that we are passing in Special Civil Application No. 5120 of 2001.

SPECIAL CIVIL APPLICATION NO. 5120 OF 2001

##. In this case, 11 Directors of Market Committee Committee, Valsad moved no confidence motion against the Chairman. A meeting was duly called in accordance with Rule 26 of the Market Committee Rules. The petitioner was present in the meeting concerned for passing no confidence motion held on 11-07-2001. In the meeting even a charter of grievances and charges against the petitioner for his alleged misconduct or misdeeds was given in writing, which is annexed with the connected Letters Patent Appeal filed by the same petitioner. Under the interim protection given by this Court, the votes given in the said meeting had been kept in sealed cover and the result is not declared. Since, we have come to the conclusion that a no confidence motion can validly be passed under the existing provisions of the Act and the Rules, we vacate the interim orders granting interim relief to the petitioner and direct the respondent Authorities, viz, the Deputy Director and Director (respondent nos. 1 and 2) to open the sealed cover of the proceedings of the meeting of the no confidence motion to declare the result and implement the same.

SPECIAL CIVIL APPLICATION NO. 7278 OF 2001

##. This is a Petition by the Chairman and the Vice Chairman of the Market Committee, Junagadh. The petitioners No.1 and 2 were elected as Chairman and Vice-Chairman respectively on 6-7-2001. A motion of no confidence was moved against the Chairman and Vice Chairman by 9 members of the Committee and they approached the Deputy Director for calling a meeting for passing a no confidence motion. The Deputy Director by letter dated 30-07-2001 wrote to the Secretary of the Committee that there is no provision for passing a no confidence motion against the Chairman and the Vice Chairman of the Market Committee. It appears that an approach was also made by the movers of the no confidence motion to the Director. The Director by his letter dated 31-07-2001 wrote to the Chairman that since a motion of no confidence has been moved against the petitioners nos. 1 and 2, it has been decided to immediately call a General Meeting of the Board. After receipt of the above communication from the Director, the petitioners nos. 1 and 2 sent the protest letter stating that no such provision of passing a no confidence motion exists. On the advice of the Director, the Deputy Director, however, had called a special General Meeting of the Members of the Committee on 5-9-2001. In view of the pendency of this Petition, ultimately no confidence motion came to be passed in the meeting held on 1-10-2001. The proceedings of the meeting have been placed on record to show that the no confidence motion was carried against the petitioners nos. 1 and 2 by a majority of 10 against 5. The petitioner no. 1 (Nandlal Bavanjibhai Posiya) who was elected as Chairman and was present in the meeting of the no confidence motion, although petitioner no. 2 (Pragjibhai Bhanabhai Karkar) remained absent. The no confidence motion passed against the petitioners nos. 1 and 2 although passed by majority was not implemented because of the interim order of stay passed by this Court. In view of our opinion and conclusion expressed by us above by this common judgment, the interim relief granted is vacated. The Petition is dismissed. It is directed that no confidence motion passed against petitioners nos. 1 and 2 shall now be implemented.

In the result, both the Letters Patent Appeals and both the Special Civil Applications are hereby dismissed. All pending Civil Applications stand disposed of and interim orders are vacated.

Rule is discharged. However, in the circumstances, there shall be no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

(J.M. PANCHAL, J.)

(N.G. NANDI, J.)

After pronouncement of judgment, the learned counsel made a request for extension of period of interim relief. Since this is a matter of `no confidence' against the elected member, we do not consider it proper to grant any further extension. Request is refused.

(D.M. DHARMADHIKARI, C.J.)

(J.M. PANCHAL, J.)

(N.G. NANDI, J.)

[sndevu]